Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Sprint PCS and AT&T Petitions for Declaratory Ruling on CMRS Access Charge Issues	)	WT Docket No. 01-316
	)	
	)	

ERRATUM (DOCKET NUMBER CORRECTION)
TO COMMENTS OF SPRINT PCS

On November 30, 2001, Sprint PCS manually filed comments in the above referenced proceedings. Upon review, Sprint PCS realized that two of the numbers in the FCC docket number were inadvertently transposed. For the convenience of the Commission, Sprint PCS has attached a complete copy of the originally-filed document with the Docket number corrected. Sprint PCS has notified Counsel for AT&T of this designation error. Sprint PCS respectfully requests that the Commission substitute this filing for the filing made on November 30, 2001.

Respectfully submitted,

SPRINT SPECTRUM L.P., d/b/a Sprint PCS

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December 4, 2001

Before the
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In the Matter of	)	
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Sprint PCS and AT&T Petitions for Declaratory Ruling on CMRS Access Charge Issues	)	WT Docket No. 01-316
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SPRINT PCS OPPOSITION TO AT&T DECLARATORY RULING

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November 30, 2001

Table of Contents

Summary

AT&T's declaratory ruling petition does not address the two questions that the federal court has referred to the Commission:

1. Sprint PCS' access charges are not unlawful. Before the court, AT&T argued that Sprint PCS' attempt to recover its cost of terminating calls on behalf of AT&T contravened the Communications Act and FCC policies. AT&T has abandoned this defense now that it has successfully referred the case to the FCC. AT&T instead argues that for certain policy reasons, the FCC "should" impose bill-and-keep for CMRS-IXC interconnection based upon the past practices of other wireless carriers. Whatever CMRS access charge convention the FCC may adopt in the future, however, does not address the question that the court has posed to the FCC: are wireless access charges prohibited today and were access charges unlawful in 1998, when Sprint PCS first asked AT&T to compensate Sprint PCS for the costs it incurred?

The FCC has already held that CMRS carriers "are entitled to just and reasonable compensation for their provision of access," and its "existing policy" is to "forbear from regulating CMRS providers' interstate access charges." AT&T's arguments that the Commission should change the law to permit the free use of wireless networks by third parties, or in the alternative, that the rules governing reciprocal compensation should now be applied to IXCs, are unsupported by any citation to the law. AT&T makes no attempt to demonstrate that CMRS carriers are not entitled to compensation for the use of their networks. Accordingly, based on all FCC precedent, the FCC should advise the court that Sprint PCS' access charges are lawful and consistent with both the Act and FCC policies.

2. AT&T has not even attempted to demonstrate that Sprint PCS' access charge prices are excessive. AT&T filed a counterclaim in response to Sprint PCS' collection lawsuit where it asserted that Sprint PCS' prices were unreasonable in contravention of Section 201(b). The court agreed with AT&T that this counterclaim should be referred to the FCC, with the court concluding, "the reasonableness of the rates for Sprint's services . . . is clearly a fact that must be proven and one which the FCC is in a better position than the Court to evaluate."

AT&T, under all FCC precedent, has the burden of establishing that Sprint PCS' rates are excessive. The FCC has identified the factors that it will consider in determining the reasonableness of access charges that are unregulated, including a comparison of challenged rates to the access charges imposed by other carriers. AT&T, however, makes no attempt in its petition to demonstrate that Sprint PCS' rates are excessive under these criteria. Given AT&T's failure to meet its burden of proof, the FCC should advise the court that the access charge prices that Sprint PCS has been assessing on AT&T are not unreasonable under the Communications Act.

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SPRINT PCS OPPOSITION TO AT&T DECLARATORY RULING

Sprint Spectrum. L.P., d/b/a Sprint PCS ("Sprint PCS"), opposes the declaratory ruling petition that AT&T Corp. ("AT&T") has submitted.[1] Sprint PCS does not repeat here the arguments made in its own declaratory ruling petition filed on the same date — namely, that AT&T's conduct is both unjust and unreasonable in violation of Section 201(b) of the Communications Act and unreasonably discriminatory in contravention of Section 202(a) of the Act.[2] Nor will Sprint PCS repeat here its recitation of the facts that lead up to the current dispute.[3]

I. AT&T RECITES NO FEDERAL LAW THAT PRECLUDES SPRINT PCS FROM RECOVERING ITS CALL TERMINATION COSTS FROM AT&T

AT&T's declaratory ruling does not address the question that the court has referred to the FCC. While AT&T contends that the Commission "should" adopt bill-and-keep for CMRS-IXC interconnection for a variety of policy reasons, the question that the court has posed is whether CMRS access charges were unlawful during the period covered by Sprint PCS' complaint (from

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[1] *See Public Notice,* Sprint PCS and AT&T File Petitions for Declaratory Ruling on CMRS Access Charge Issues; Pleading Cycle Established, WT Docket No. 01-316, DA 01-2618 (Nov. 8, 2001); AT&T Corp., Petition for Declaratory Ruling, WT Docket No. 01-316 (Oct. 22, 2001)("AT&T Petition"). Although AT&T also submits its petition pursuant to Section 208 of the Communications Act, the petition does not begin to comply with the FCC's complaint rules. *See* 47 U.S.C. § 1.720 *et seq.*

[2] *See* Sprint PCS, Petition for Declaratory Ruling, WT Docket No. 01-316, at 8-11 (Oct. 22, 2001)("Sprint PCS Petition").

[3] *See id.* at 1-4.

1998 to present). AT&T has recited no FCC rule or order precluding CMRS carriers from recovering their costs of call termination from IXCs, and there is no such rule or order. Accordingly, pursuant to its "existing policy of forbearing from regulating CMRS providers' interstate access charges,"[4] the Commission should advise the court that Sprint PCS' access charges were and are lawful during the period covered by the Sprint PCS complaint.

The Commission has established a calling party's network's pays ("CPNP") regulatory regime for interconnection of networks.[5] AT&T, when acting as a competitive local exchange carrier ("CLEC"), acknowledges its obligation to compensate Sprint PCS for the costs it incurs in terminating AT&T's local (intraMTA) traffic. AT&T, when acting as a toll carrier, also compensates local exchange carriers ("LECs") for the costs they incur in terminating AT&T's toll calls. AT&T, however, refuses to acknowledge its obligation to compensate Sprint PCS for the costs it incurs in terminating AT&T's toll traffic.

Beginning in 1998, Sprint PCS specifically asked IXCs to compensate Sprint PCS for the costs Sprint PCS incurs in terminating their toll traffic. Some IXCs honored Sprint PCS' request. AT&T did not.[6] After two years of fruitless discussions (and while AT&T continued to

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[4] *LEC-CMRS Interconnection NPRM,* 11 FCC Rcd 5020, 5075 ¶ 117 (1996).

[5] In fact, under *existing* rules, bill-and-keep is appropriate only for local interconnection and then *only* when traffic flows between the interconnecting carriers are "roughly balanced." 47 C.F.R. § 51.713(b). *See also* AT&T Comments, Docket No. 01-92, at 6 (Aug. 21, 2001)("B&K simply cannot make economic sense, even as a matter of theory, unless traffic is in balance. But traffic is necessarily out of balance in the context of interexchange access.").

[6] AT&T asserts that the CMRS industry "voluntarily" agreed to bill-and-keep. *See* AT&T Petition at 4. Sprint PCS certainly has not agreed to bill-and-keep since 1998 when it asked for compensation from AT&T. And the fact that AT&T refused to pay compensation after this request demonstrates that the supposed "voluntary" arrangement is not voluntary at all. Moreover, AT&T engages in revisionist history when it asserts that bill-and-keep arose "spontaneously" in the context of CMRS interconnection. *Id.* at 2 and 4. Bill-and-keep rather arose because ILECs and IXCs refused to compensate CMRS carriers for the costs they imposed on CMRS networks. *See generally First Local Competition Order,* 11 FCC Rcd 15499, 16043 ¶ 1094 (1996).

send its toll calls to Sprint PCS for termination), Sprint PCS filed a lawsuit to collect the sums AT&T owed it for services rendered.

AT&T readily concedes that "Sprint PCS undoubtedly incurs costs in delivering calls to and from AT&T's network."[7] Yet, AT&T refuses to compensate Sprint PCS for these costs — even though AT&T receives revenues from these tolls calls *only* because Sprint PCS successfully terminates AT&T's traffic.

According to AT&T, "the primary issue in this case is the question of whether Sprint PCS should receive *any* compensation for terminating calls to its customers."[8] AT&T told the federal court that federal law prohibits Sprint PCS from recovering any of its costs from the cost-causer and that "by assessing 'access charges' on AT&T, Sprint PCS is engaged in, and continues in, an unreasonable practice" in contravention of Section 201:

> Under the Federal Communications Act, Federal Communications Commission policies, and industry practice, wireless carriers (including AT&T's wireless affiliate) do not demand, and do not receive, any compensation from long distance carriers when they terminate calls from, or deliver calls to, the long distance carrier's networks. . . . Under FCC policies . . . , wireless carriers do not charge long distance carriers for access.[9]

Based on this AT&T representation, the court referred this issue to the Commission, concluding: "the FCC is in a better position to evaluate whether Sprint may properly charge for the services which it has provided to AT&T."[10]

AT&T has fundamentally changed its theory of defense now that it successfully referred to the FCC the issues it identified to the court. While AT&T asserts that Sprint PCS access

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[7] AT&T Petition at 14.

[8] AT&T Suggestions in Support of Motion for Referral of Issues to the FCC Under the Doctrine of Primary Jurisdiction, at 11 (April 2, 2001)(emphasis in original).

[9] AT&T Answer and Counterclaim, at 7 ¶ 6 and 9 ¶ 16 (Sept. 25, 2000).

charges are "unwarranted" and "completely inappropriate,"[11] its petition recites no "Federal Communications Act" provision, or any "Federal Communications Commission policy," that prohibits Sprint PCS from recovering the costs AT&T imposes on Sprint PCS's network. This is not surprising because, as Sprint PCS pointed out in its own declaratory ruling petition, the FCC has squarely ruled that CMRS providers may recover from IXCs their costs of terminating long distance traffic:

> The Commission recently determined that the CMRS marketplace is sufficiently competitive to support forbearance from a tariff filing requirement for CMRS interstate access service. It should be noted, however, that in the Interconnection Order, the Commission stated that *cellular carriers are entitled to just and reasonable compensation for their provision of access.*[12]

AT&T rather asserts that the Commission "*should*" rule that CMRS access charges are "unwarranted,"[13] and it recites several policy arguments in support of its position (*e.g.,* AT&T should be entitled to free service so *the FCC* can "avoid regulating . . . CMRS-IXC compensation arrangements").[14] But whatever CMRS access charge convention that the Commission *may* adopt in the future, does *not* address the question that the court has asked the FCC to resolve — namely, are access charges prohibited today and were access charges unlawful in 1998, when Sprint PCS first asked AT&T to compensate Sprint PCS for the costs it incurred?[15]

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[10] *Sprint Spectrum L.P.* v. *AT&T Corp.,* Case No. 00-0973-CV-W-5, *Order,* at 8 (W.D. Mo., July 24, 2001)("*Primary Jurisdiction Referral Order*"). A copy of this Order is appended to the Sprint PCS petition.

[11] *See* AT&T Petition at 2, 4, 17 and 20.

[12] *CMRS Equal Access/Interconnection,* 9 FCC Rcd 5408, 5447 ¶ 83 (1994)(emphasis added).

[13] AT&T Petition at 17 (emphasis added).

[14] AT&T Petition at 3.

[15] AT&T's statement that "Sprint PCS began in 1999 to demand compensation from AT&T" must be a typographic error, because AT&T elsewhere recognizes that Sprint PCS "began seeking such [access charge] payments in 1998." *Compare* AT&T Petition at 14 *with id.* at 4.

The Commission has never held that CMRS carriers are precluded from recovering the costs they incur in terminating IXC toll traffic. Rates for CMRS services are not regulated,[16] and the Commission's "existing policy" is to "forbear from regulating CMRS providers' interstate access charges."[17] Even if it were to accept AT&T's policy arguments (but see below), the Commission could at most adopt bill-and-keep for CMRS-IXC interconnection on a prospective basis.[18] Deciding now for policy reasons that Sprint PCS is precluded from recovering from AT&T access charges during a period of time that Sprint PCS' rates were not regulated would constitute unlawful retroactive rulemaking.[19]

AT&T says that it is "significant" that Sprint PCS does "not allege that AT&T has entered into any written or oral contract with Sprint PCS that establishes a duty to compensate Sprint PCS at a particular rate."[20] This is not "significant" at all. The fact that AT&T repeatedly rebuffed Sprint PCS' requests for an access service contract does *not* mean that that AT&T is entitled to *free* service at Sprint PCS' expense. In *Total Communications* v. *AT&T,* the Commission found that the access service provider engaged in an unlawful arrangement in attempt to secure excessive access charges.[21] AT&T argued that it was entitled to free service as a result of

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[16] *See, e.g.,* 47 U.S.C. § 332(c)(3)(A)(prohibiting state rate regulation); *Year 2000 Biennial Review — Amendment of Part 22,* Docket No. 01-108, FCC 01-153, at ¶ 60 (May 17, 2001)("CMRS licensees are not subject to federal rate regulation.").

[17] *LEC-CMRS Interconnection NPRM,* 11 FCC Rcd 5020, 5075 ¶ 117 (1996).

[18] AT&T says that it would be "patently unfair" for the FCC to require AT&T to pay access charges "retroactively." AT&T Petition at 28. However, Sprint PCS does <u>not</u> seek retroactive relief. Sprint PCS seeks access charges only from 1998, when it specifically asked AT&T to begin compensating Sprint PCS for toll call termination.

[19] Agencies may not apply rules retroactively when the rules "alter the past legal consequences of past actions." *Bowen* v. *Georgetown University Hospital,* 488 U.S. 204, 219 (Scalia, J., concurring). *See generally* 5 U.S.C. § 551(4)(rule defined to have "future effect"); *Landgraf* v. *USI Film Products,* 511 U.S. 244, 266 (1994)(retroactive law takes way or impairs vested rights, or attached a new disability with respect to transactions already past); *Miller* v. *Florida,* 482 U.S. 423, 430 (1987)("A law is retrospective if it 'changes the legal consequences of acts completed before its effective date.'").

[20] AT&T Petition at 14.

[21] *See Total Telecommunications* v. *AT&T,* FCC 01-84, 16 FCC Rcd 5726 (March 13, 2001).

the access provider's unlawful conduct. The Commission nonetheless "reject[ed]" AT&T's argument that the unlawful relationship . . . , in and of itself, makes it unreasonable for Total to charge anything for the access services provided to AT&T":

> Complainants did provide a service to AT&T, i.e., completing calls from AT&T's customers to Audiobridge. Moreover, AT&T recovered revenue through ordinary long distance rates from its own customers for calls completed to Audiobridge. . . . Therefore, Total's unlawful relationship with Atlas, standing alone, does not preclude Complainants from charging "reasonable" access charges from AT&T.[22]

The same analysis applies here. Sprint PCS provided a service to AT&T (completing calls from AT&T's customers to Sprint PCS customers). AT&T recovered revenue through ordinary long distance rates from its own customers for calls completed to Sprint PCS. If an access provider is able to recover a "reasonable" sum for the services provided when it engages in unlawful activity, certainly Sprint PCS is entitled to recover a "reasonable" sum for the access services it provides to AT&T when it engages in no unlawful conduct of any kind.

AT&T's "bill-and-keep" proposal for future CMRS-IXC interconnection should be evaluated in the comprehensive *Unified Intercarrier Compensation* rulemaking that is now pending, so the Commission can consider the views of all interested parties, as opposed to the views of one CMRS carrier and one IXC. Moreover, the Commission should note that the policy arguments that AT&T makes in its declaratory ruling petition are flatly inconsistent with its position in the rulemaking docket:[23]

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[22] *Id.* at ¶ 37.

[23] AT&T does contend in a single paragraph that bill-and-keep is "sustainable" for CMRS-IXC interconnection for "reasons which AT&T will address in more detail" in its declaratory ruling petition. AT&T Comments, Docket No. 01-92, at 53 (Aug. 21, 2001). But in the petition that it filed, AT&T never explains the inconsistency of its position — bill-and-keep "simply cannot make economic sense . . . unless traffic is in balance."

AT&T Declaratory Ruling Petition at 3, 12, and 18 (Oct. 22, 2001)	**AT&T Comments**, Docket No. 01-92, at 6, 9, 47 and 48 (Aug. 21, 2001)
"The prevailing bill and keep system is thus the most efficient and deregulatory compensation mechanism for IXC-CMRS interconnection. * * * [A] bill and keep regime for wireless termination or origination of interexchange calls [is] preferable as a matter of economic theory. * * * [B]ill and keep is the economically optimal solution."	"B&K simply cannot make economic sense, even as a matter of theory, unless traffic is in balance. But traffic is necessarily out of balance in the context of interexchange access. * * * And even apart from the reasons why B&K is inferior to CPNP as a general matter, it would be unworkable in the access charge context. * * * B&K would clearly be inappropriate in the context of interstate access charges. * * * B&K for interexchange access services would harm competition and consumers."

Most importantly, the Commission must understand that the bill-and-keep proposal which AT&T wants the Commission to adopt (at least in this proceeding) would be grossly inequitable to the American public. Under AT&T's proposal, *both the calling party and the person being called would pay for call termination — in short, consumers would pay twice.* According to AT&T, the costs Sprint PCS incurs in terminating AT&T traffic should be paid by the Sprint PCS customers receiving the AT&T toll calls.[24] But, the prices that AT&T charges its own customers who call Sprint PCS customers also include an expense for terminating switched access. Thus, AT&T wants the Commission to approve an arrangement where it can overcharge its own customers, obtain free service from Sprint PCS, and pocket the overcharge — that is, receive revenues for services not provided or, what AT&T accurately describes, receive "supranormal profits" vs. "normal profits."[25]

[24] *See* AT&T Petition at 17 (FCC "should make clear that wireless carriers should recover their full network costs directly from their end users.").

[25] *See* AT&T Petition at 25 n.13. There is also no basis to AT&T's argument that the FCC "would need to ensure that CMRS providers are not achieving double recovery of costs, *i.e.,* from their terminating end users and from the IXCs." *Id.* at 17 and 23. The rates CMRS charge their end-users are unregulated because of the intensely competitive wireless market place. As the dramatic drops in CMRS carrier rates has demonstrated, cost reductions are inevitably flowed to customers in the form of lower retail prices for CMRS.

In summary, so long as we operate in a CPNP environment and so long as CMRS rates are not regulated, AT&T does not possess the right to unilaterally decide for itself whether or not it will pay Sprint PCS — especially when Sprint PCS specifically requested cost recovery and when AT&T continued to send its traffic to Sprint PCS for call completion.[26] Accordingly, the Commission should advise the federal court that Sprint PCS has the legal right to be compensated for the costs it incurs in terminating AT&T's toll calls (or in delivering AT&T's 8YY calls).

II. AT&T HAS NOT EVEN ATTEMPTED TO DEMONSTRATE THAT SPRINT PCS' ACCESS CHARGE PRICES ARE UNREASONABLE

AT&T filed a counterclaim in the Sprint PCS collection lawsuit where it alleges that "Sprint PCS' access charges are unjust and reasonable" under Section 201(b) of the Communications Act.[27] Before the court, AT&T argued that the "FCC has expertise in assessing the reasonableness of rates and for that reason issues regarding the reasonableness of rates have been held by courts to be within the primary jurisdiction of the FCC."[28] The court agreed with AT&T, concluding that "the reasonableness of the rates for Sprint's services . . . is clearly a fact that must be proven and one which the FCC is in a better position than the Court to evaluate."[29] Having successfully convinced the court that the FCC should determine whether Sprint PCS' access charges are just and reasonable, AT&T makes no attempt in its FCC petition to demonstrate that Sprint PCS' rates are, in fact, unreasonable.

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[26] *See CLEC Access Charge Declaratory Ruling,* CCB/CPD No. 01-02, FCC 01-313 (Oct. 22, 2001), in which the Commission rejected AT&T's contention that interexchange carriers can unilaterally determine whether rates are reasonable.

[27] AT&T Answer and Counterclaim at 8 ¶¶ 9-13.

[28] AT&T Suggestions in Support of Motion for Referral of Issues to the FCC Under the Doctrine of Primary Jurisdiction, at 11 (April 2, 2001)(internal citations and quotations omitted).

[29] *Primary Jurisdiction Referral Order* at 8.

"[I]t is well settled that the complainant [here, AT&T] bears the burden of establishing that the challenged rate is unreasonable."[30] The Commission has identified the factors that it will consider in determining the reasonableness of access charges that are unregulated, including a comparison of challenged rates to the access charges imposed by other carriers, both incumbent LECs and competitive access providers.[31] AT&T, however, makes no attempt whatsoever in its petition to demonstrate that the access charges that Sprint PCS has been assessing are unreasonable under the framework that the Commission has established. Accordingly, the Commission has no choice but to dismiss this AT&T claim for failure to meet its burden of proof.[32]

Although Sprint PCS does not have the burden of proof with respect to AT&T's excessive rate claim, the Commission should be apprised that the access charges that Sprint PCS has assessed on AT&T are *less* than the costs Sprint PCS incurs in terminating AT&T's traffic.[33] Sprint PCS has been charging AT&T approximately $0.028 per minute for terminating AT&T's interstate calls, although this rate continues to decrease over time.[34] This amount, however, is

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[30] *Sprint* v. *MGC Communications,* 15 FCC Rcd 14027, 14029 ¶ 5 (2000). *See also INFONXX* v. *New York Telephone,* 13 FCC Rcd 3589, 3597 ¶ 16 (1997).

[31] *See CLEC Declaratory Ruling Order,* CCD/CPD No. 01-02, FCC 01-313, at ¶ 23 (Oct. 22, 2001); *AT&T* v. *Business Telecom,* EB-01-MD-001, FCC 01-185 (May 30, 2001).

[32] *See Sprint* v. *MGC Communications,* 15 FCC Rcd 14027 at ¶ 1 (2000)(FCC dismisses Sprint's complaint on the ground that Sprint "fail[ed] to meet its burden" because it "rel[ied] solely on the rate of MGC's incumbent competitors to establish a benchmark for reasonableness."). Here, AT&T does not even cite the rates charged by any other access provider.

[33] While Sprint PCS' cost of terminating traffic is undoubtedly higher than landline exchange access providers, this cost differential is not the result of "start-up costs" as was the case with CLEC access providers. Wireless carriers provide a more sophisticated, ubiquitous and complete service than any landline carrier, and accordingly incur additional expense in doing so.

[34] Sprint PCS has been using as a surrogate the access charge rate set forth in the NECA tariffs for Tier 1 incumbent LECs.

less than Sprint PCS' call termination costs based on TELRIC cost studies that it has completed.[35]

AT&T's arguments concerning the proper level of CMRS access charges in the future should also be considered in the pending *Unified Intercarrier Compensation* rulemaking. Nevertheless, several brief comments are in order here. First, Sprint PCS agrees with AT&T that as a general rule, CMRS call termination prices should be based on the TELRIC cost methodology because TELRIC "best replicates the prices that would be charged by carriers subject to competitive market pressures and best ensures an efficient utilization of the service in question."[36] Sprint PCS also agrees with AT&T that if a CMRS provider proves "in a TELRIC rate case against the incumbent LEC" that it is entitled to a higher rate for reciprocal compensation, the CMRS carrier should be able to use the same cost-based rate for its access charges.[37] Where AT&T and Sprint PCS disagree is over the "surrogate" rate that CMRS may use for access charges when no TERLIC cost study is available.

According to AT&T, CMRS carriers should not be able to charge IXCs more for access than they charge the predominant ILEC in the state for terminating local exchange traffic"[38] — in other words, the CMRS access charge should be limited to the RBOC's TERLIC costs of call termination. There are several major defects with this AT&T proposal:

1. The FCC has already held that reciprocal compensation rates applicable to local interconnection do not apply to the exchange access services provided to IXCs;[39]

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[35] For example, Sprint PCS' New York TELIRC cost study calculated additional call termination costs of $0.039. Sprint PCS' Florida TERLIRC cost study calculated additional call termination costs of $0.066.

[36] AT&T Petition at 24.

[37] *Id.* at 27.

[38] *Id.* at 26.

[39] *See First Local Competition Order,* 11 FCC Rcd 15499, 15599 ¶ 191 (1996).

2. Sprint PCS, unlike CLECs or the large RBOCs, provides service coverage over almost the entire United States, including small and rural communities and geographic areas that might not even have landline service.[40]

3. CMRS carriers cannot compete meaningfully with incumbent LECs (including rural LECs) if they receive from IXCs substantially less than what ILECs receive from IXCs for performing the same toll call termination function;

4. CMRS carriers have higher call termination costs than ILECs. AT&T's payment to Sprint PCS of an ILEC's access charges would result in Sprint PCS receiving less than one-half of its actual, TELRIC additional costs of call termination.[41] These higher costs are not the result of start up costs, as with CLECs, but are a result of the additional service provided by wireless carriers; and

5. Sprint PCS provides a more complete service than any ILEC or CLEC. Sprint PCS will terminate a call made to one of its wireless customers *no matter where they are in the country.* If the wireless customer is not currently being served by his or her home switch, Sprint PCS will carry the call to the customer no matter where they travel. Sprint PCS' network is not confined to large urban areas, as are most CLECs and RBOCs, but also covers many small communities and even largely rural areas. Sprint PCS' geographic network covers nearly 244 million people, or more than 85% of the population — a network more than twice of size of the largest incumbent ILEC.[42]

AT&T has stated that there is "no principled justification for treating LEC-CMRS compensation any differently than LEC-LEC compensation."[43] If this is true, then there is no principled justification for treating IXC-CMRS interconnection any differently that IXC-LEC compensation.[44]

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[40] While some of this coverage is provided through roaming agreements, the access service provided does not change. Indeed, Sprint PCS permits an AT&T customer to reach a Sprint PCS customer anywhere they may be located, even if they are traveling far from their home territory, all at no additional charge to AT&T.

[41] The average price that ILECs impose for interstate access is $0.0171 per minute. *See* Industry Analysis Division, *Trends in Telephone Service,* at 1-8, Table 1.4 (August 2001). According to the TELRIC cost studies that Sprint PCS has completed to date, Sprint PCS' additional costs of call termination range from $0.039 and $0.066.

[42] There is also an increased likelihood that AT&T will generate revenue from a toll call to a Sprint PCS customer because Sprint PCS (unlike ILECs) offers voice mail at no additional charge.

[43] AT&T Comments, Docket No. 01-92, at 54 n.41 (Aug. 21, 2001).

[44] As an excuse for receiving free service, AT&T says that CMRS access charges "will lead to a regulatory quagmire." AT&T Petition at 18. This assertion is not accurate, as evidenced by AT&T's failure to support its contention. But in any event, as a matter of law, the FCC does not have the flexibility to escape its statutory responsibilities to order CMRS-IXC interconnection on terms consistent with Sec-

In summary, given AT&T's utter failure to meet its burden of proof, the Commission must advise the court that Sprint PCS' access charge prices are not unjust and unreasonable under the Communications Act.

III. CONCLUSION

It is understandable that AT&T would want free service from Sprint PCS. After all, the prices AT&T charges its customers for toll calls made to Sprint PCS customers includes a component for terminating switched access expense, and if AT&T has no terminating switched access expense (because it receives such access for free), it can pocket the difference as pure profits.

The Commission, however, is charged with promoting the public interest, not AT&T's financial interest. The public interest is not served when the calling party and the called party each pay for the same call termination function. The Commission's goal for the CMRS industry — to compete directly for the residential services provided by incumbent LECs — is not promoted when ILECs are compensated when they terminate IXC toll calls, but CMRS carriers do not receive the same compensation for terminating the same IXC toll calls.

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tion 201 of the Act. *See* 47 U.S.C. § 332(c)(1)(B). There is no basis in law or equity to treat one type of access provider (CMRS) different than all other access providers. And, the FCC certainly cannot subject CMRS carriers to discriminatory treatment so AT&T can generate additional profits by charging customers for a service that it does not provide.

For the foregoing reasons and those set forth in Sprint PCS' declaratory ruling petition, the Commission should enter an order advising the federal court that Sprint PCS' access charges are not unlawful under the Communications Act and that AT&T has not demonstrated that Sprint PCS' prices for its access services are unjust or unreasonable.

Respectfully submitted,

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November 30, 2001

CERTIFICATE OF SERVICE

I, Jo-Ann Monroe, do hereby certify that on this 30th day of November 2001 a copy of the foregoing "Sprint PCS Opposition to AT&T Declaratory Ruling" was served by Electronic and Overnight Mail to:

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